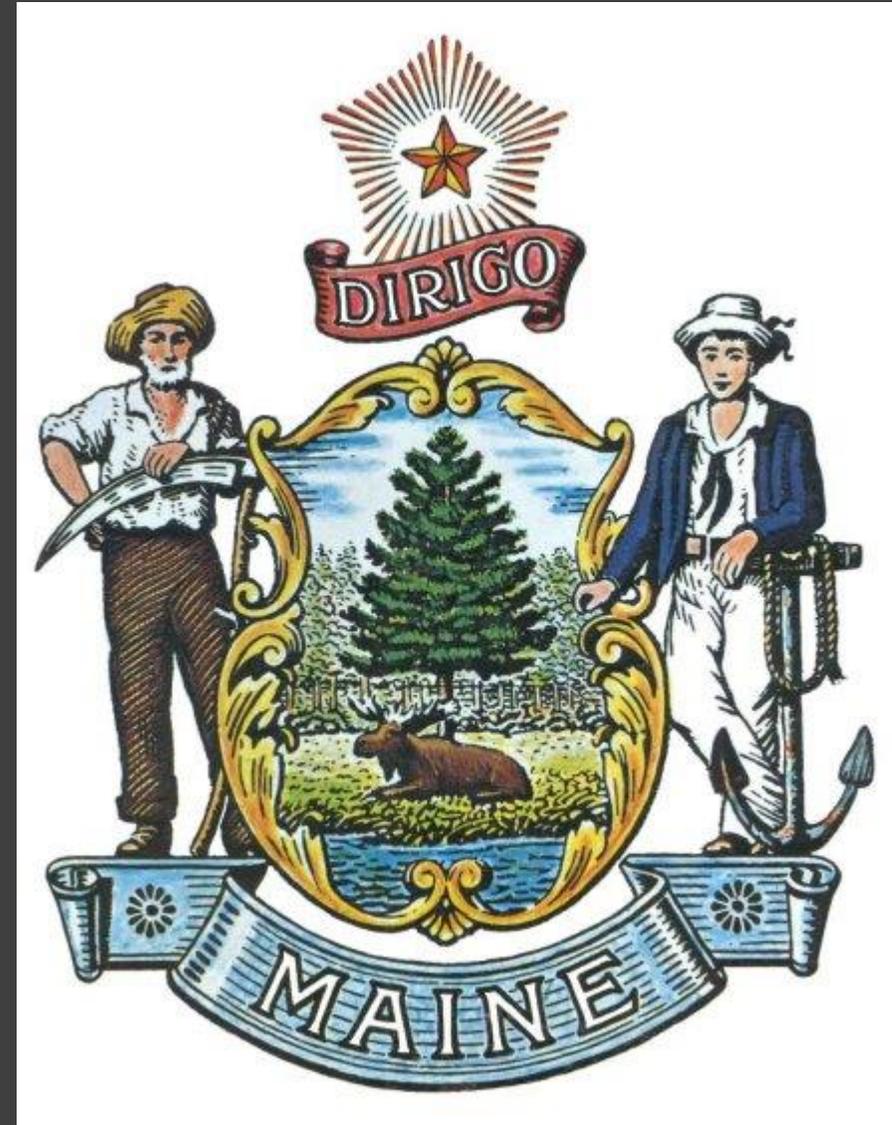


Duties and Powers of the Board of Occupational Safety and Health (BOSH)



Maine Board of Occupational Safety and Health

Composition of the Board

10 Members

- 3 represent employers (state agencies, counties, municipalities)
- 3 represent employees (state agencies, counties, municipalities)
- 1 represents an insurance company licensed to insure workers' compensation
- 2 represent the public
- 10th member is the Director of the Bureau of Labor Standards

Four year terms

BOSH Meetings

- Required to meet twice a year
- Practice is to meet quarterly - - 1st Thursday of March, June, September and December
- Special meetings may be called
- Quorum is majority = 6 board members if all 10 seats are filled.

Powers and Duties of BOSH

The board shall formulate and adopt reasonable rules, pursuant to Title 5, chapter 375, subchapter II, for safe and healthful working conditions, including rules requiring the use of personal protective equipment, monitoring and record keeping.

The rules so formulated shall at a minimum conform to federal standards of occupational safety and health, so that the state program can be federally approved as a public employee only occupational safety and health program.

26 M.R.S. § 565.

Federal OSHA Standards

The Occupational Safety and Health Act was enacted by Congress in 1970 to “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.”

State Plan

- OSHA expressly excluded any state or political subdivision of a state.
- OSHA provides for states to submit “state plans” to OSHA, for which the state receives a federal grant.
- 22 State Plans covering both private sector and state and local government workers.
- Six State Plans (including Maine) covering only state and local government workers.
- State Plans are monitored by OSHA and must be at least as effective as OSHA in protecting workers and in preventing work-related injuries, illnesses and deaths

Rules

- The State Plan and 26 M.R.S. § 565 requires BOSH to formulate and adopt rules that at a minimum conform to federal standards of occupational safety and health.
- Generally, BLS staff prepares a draft Rule for vote by BOSH.
- 1st BOSH meeting: vote to post proposed Rule for public comment
- Public hearing on Rule only required if requested by 5 interested persons, otherwise is optional;
- Public hearing is just receipt of comments; not testimony under oath; no requirement to respond to questions at the time; BOSH members may ask questions
- Written public comments received during comment period, and BOSH (with assistance from BLS staff) must respond to any comments
- 2nd BOSH meeting (or 3rd, if meeting for public hearing on Rule): vote to adopt proposed Rule, after considering any public comments
- MDOL (Maine Department of Labor) staff does the paperwork to file rulemaking forms with Secretary of State

Incorporation by Reference

(1) Through rulemaking, an agency may incorporate by reference all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this State or by a nationally recognized organization or association.

(2) The reference in the agency rules **must fully identify the incorporated matter** by exact title, edition or version and **date of publication**.

5 M.R.S. 8056(1)(B)

It is the practice of BOSH to incorporate OSHA regulations. More robust requirements or clarifications may be made. If there is a change in an OSHA regulation, BOSH must adopt that change, and change the date of the OSHA regulation being adopted.

Example of Incorporation by Reference

Incorporation by Reference

The State Board of Occupational Safety and Health adopts the *General Industry Standards for Occupational Safety and Health* as promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration as Title 29 *Code of Federal Regulations*, Part 1910, revised as of **July 14, 2021**.

Emergency Rulemaking

- A board or agency may adopt a rule effective immediately if the board/agency finds immediate adoption “is necessary to avoid an immediate threat to public health, safety or general welfare.”
- The board must make a finding as to the existence of an emergency.
- The board may forego the notice and public comment period if it finds that is necessary “to mitigate or alleviate the threat found.”
- An emergency Rule is effective for 90 days. In most instances, a board or agency will post a proposed rule (often identical to the emergency rule) at the same time the emergency rule is adopted. Then, within 90 days (or soon thereafter), the board or agency may adopt the rule as final, under the standard rulemaking process described above.

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- Ch. 1 Procedural Rules
- Ch. 2 Occupational Safety and Health Standards for General Industry Employment in the Public Sector
- Ch. 3 Occupational Safety and Health Standards for Construction Industry Employment in the Public Sector
- Ch. 4 Occupational Safety and Health Standards for Firefighting in the Public Sector
- Ch. 5 Occupational Safety and Health Standards for Public Safety Diving
- Ch. 6 Recording Occupational Injuries and Illnesses in the Public Sector
- Ch. 7 Minimum Driver Training Requirements for Fire Apparatus
- Ch. 8 Occupational Safety and Health Standards for Whistleblower/Discrimination in the Public Sector
- Ch. 9 Occupational Safety and Health Standards for Issuing Variances in the Public Sector
- Ch. 10 Occupational Safety and Health Standards for Section 1908 Consultation Guidelines in the Public Sector

Role of MDOL, Bureau of Labor Standards

BLS enforces the Rules. BLS inspects work places and investigates workplace safety and health in accordance with its authority at Title 26, MRS sections 44, 44-A, 45, 46 and 565 - 566.

BLS may assess a penalty for violations up to \$1,000 per day per violation.
26 M.R.S. § 46.

Appeals to BOSH

- Employer may formally appeal a citation and penalty to BOSH within 15 days.
- BOSH then holds a hearing, which is an “adjudicatory proceeding.”
Chapter 1, Procedural Rules
- BOSH then issues a decision approving, disapproving, or modifying the BLS citation or penalty.
- The decision by BOSH is appealable to Superior Court as an administrative appeal, based on a paper record, with no further action or input needed by BOSH (unless the Court orders it).

26 M.R.S. § 568

SafetyWorks! for Public and Private Sector

Voluntary

Funded from combination of federal and state funds

Training and prevention, not enforcement

<https://safetyworksmaine.gov/about/index.html>

State Law Prohibits Discrimination

An employer is prohibited from discharging or in any way discriminating (retaliating) against a worker who files a health and safety complaint or who testifies or is about to testify in a proceeding.

26 M.R.S. § 570

Freedom of Access Act

- BOSH transacts its business in “public proceedings” that the public may attend.
- BOSH members should not conduct business between meetings by email, etc. (with exception of non-substantive matters, such as scheduling).
- Any investigations and citations by BLS are confidential except for “final agency action.” 26 M.R.S. § 3.
- BOSH may go into executive session for confidential matters, such as an appeal hearing on a penalty.
- A decision of BOSH on appeal of a penalty is “final agency action,” and that decision is public.

Conflict of Interest

- An executive employee commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have **a direct and substantial financial interest**:
 - A. Himself, his spouse or his dependent children;
 - B. His partners;
 - C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment;
 - D. An organization in which he has a direct and substantial financial interest; or
 - E. Any person with whom the executive employee has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22-A, during the preceding year.